

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1328** Session of  
2010

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INTRODUCED BY ERICKSON, ALLOWAY, LOGAN, TOMLINSON, ORIE,  
RAFFERTY, D. WHITE, KASUNIC, EARLL, WAUGH, FONTANA, M. WHITE,  
BROWNE, FOLMER, MELLOW, WOZNIAK, O'PAKE, BAKER, MENSCH,  
DINNIMAN, GREENLEAF, BOSCOLA, STACK, STOUT, YAW, COSTA,  
SCARNATI, GORDNER, CORMAN, WARD, BRUBAKER AND HUGHES,  
APRIL 27, 2010

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AS AMENDED ON SECOND CONSIDERATION, JUNE 21, 2010

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## AN ACT

1 Amending the act of December 22, 1983 (P.L.306, No.84), entitled  
2 "An act providing for the State Board of Vehicle  
3 Manufacturers, Dealers and Salespersons; and providing  
4 penalties," further providing for definitions and for  
5 unlawful acts by manufacturers or distributors.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 2 of the act of December 22, 1983  
9 (P.L.306, No.84), known as the Board of Vehicles Act, is amended  
10 by adding a definition to read:

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 \* \* \*

16 "Site-control agreement" or "exclusive use agreement." An  
17 agreement that, regardless of its name, title, form or the

1 parties entering into it, has the effect of:

2 (1) controlling the use and development of the premises  
3 of a dealer's franchise or facility;

4 (2) requiring a dealer to establish or maintain an  
5 exclusive dealership facility on the premises of the dealer's  
6 franchise or facility;

7 (3) restricting the power or authority of the dealer or  
8 the lessor if the dealer leases the dealership premises, to  
9 transfer, sell, lease, develop, redevelop or change the use  
10 of the dealership premises, whether by sublease, lease,  
11 collateral pledge of lease, right of first refusal to  
12 purchase or lease, option to purchase or lease or any similar  
13 arrangement; or

14 (4) establishing a valuation process or formula for the  
15 dealership premises that does not allow for the dealership  
16 premises to be transferred, sold or leased by the dealer at  
17 the highest and best use valuation for the dealership  
18 premises.

19 \* \* \*

20 Section 2. ~~Section 12(b) of the act is amended by adding a~~ ←  
21 ~~paragraph~~ 12(A) AND (B) OF THE ACT ARE AMENDED BY ADDING ←  
22 PARAGRAPHS to read:

23 Section 12. Unlawful acts by manufacturers or distributors.

24 \* \* \* ←

25 (A) UNLAWFUL COERCIVE ACTS.--IT SHALL BE A VIOLATION FOR ANY ←  
26 MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR, FIELD REPRESENTATIVE,  
27 OFFICER, AGENT OR ANY REPRESENTATIVE WHATSOEVER OF SUCH  
28 MANUFACTURER, FACTORY BRANCH OR DISTRIBUTOR LICENSED UNDER THIS  
29 ACT TO REQUIRE, ATTEMPT TO REQUIRE, COERCE OR ATTEMPT TO COERCE  
30 ANY NEW VEHICLE DEALER IN THIS COMMONWEALTH TO:

1 \* \* \*

2 (10) (I) SELL, OFFER TO SELL OR SELL EXCLUSIVELY AN  
3 EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR  
4 SIMILAR PRODUCT, SUCH AS GAP PRODUCTS, OFFERED, ENDORSED  
5 OR SPONSORED BY THE MANUFACTURER OR DISTRIBUTOR BY THE  
6 FOLLOWING MEANS:

7 (A) BY AN ACT OR STATEMENT THAT THE MANUFACTURER  
8 OR DISTRIBUTOR WILL IN ANY MANNER IMPACT THE DEALER,  
9 WHETHER IT IS EXPRESS OR IMPLIED OR MADE DIRECTLY OR  
10 INDIRECTLY.

11 (B) BY A CONTRACT, OR AN EXPRESS OR IMPLIED  
12 OFFER OF CONTRACT, MADE TO THE DEALER ON THE  
13 CONDITION THAT THE DEALER SHALL SELL, OFFER TO SELL  
14 OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT,  
15 EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT OFFERED,  
16 ENDORSED OR SPONSORED BY THE MANUFACTURER OR  
17 DISTRIBUTOR.

18 (C) BY MEASURING THE DEALER'S PERFORMANCE UNDER  
19 THE FRANCHISE BASED ON THE SALE OF EXTENDED SERVICE  
20 CONTRACTS, EXTENDED MAINTENANCE PLANS OR SIMILAR  
21 PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE  
22 MANUFACTURER OR DISTRIBUTOR.

23 (D) BY REQUIRING THE DEALER TO ACTIVELY PROMOTE  
24 THE SALE OF EXTENDED SERVICE CONTRACTS, EXTENDED  
25 MAINTENANCE PLANS OR SIMILAR PRODUCTS OFFERED,  
26 ENDORSED OR SPONSORED BY THE MANUFACTURER OR  
27 DISTRIBUTOR.

28 (II) NOTHING IN THIS PARAGRAPH SHALL PROHIBIT A  
29 MANUFACTURER OR DISTRIBUTOR FROM PROVIDING INCENTIVE  
30 PROGRAMS TO A NEW VEHICLE DEALER WHO MAKES THE VOLUNTARY

1 DECISION TO OFFER TO SELL, SELL OR SELL EXCLUSIVELY AN  
2 EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR  
3 SIMILAR PRODUCT OFFERED, ENDORSED OR SPONSORED BY THE  
4 MANUFACTURER OR DISTRIBUTOR.

5 (b) Violations.--It shall be a violation of this act for any  
6 manufacturer, factory branch, distributor, field representative,  
7 officer, agent or any representative whatsoever of such  
8 manufacturer, factory branch or distributor licensed under this  
9 act to:

10 \* \* \*

11 (19) Directly or indirectly condition any of the  
12 following actions on a dealer, prospective dealer or owner of  
13 an interest in a dealership franchise or facility to enter  
14 into a site control agreement or exclusive use agreement:

15 (i) awarding of a franchise to a prospective dealer;

16 (ii) adding of a line-make or franchise to an  
17 existing dealer's franchise or facility;

18 (iii) renewing of an existing dealer's franchise;

19 (iv) approving of the relocation of an existing  
20 dealer's franchise or facility; or

21 (v) approving of the sale or transfer of a dealer's  
22 ownership of a franchise or facility.

23 Nothing in this paragraph prohibits a dealer, prospective  
24 dealer or owner of an interest in a dealership franchise or  
25 facility from voluntarily entering into such an agreement for  
26 other consideration. However, a provision contained in an  
27 agreement which is not voluntarily entered into by a dealer,  
28 prospective dealer or owner of an interest in a dealership  
29 franchise or facility on or after the effective date of this  
30 paragraph that is inconsistent with the provisions of this

1 section shall be a violation of this act.

2 \* \* \*

3 Section 3. This act shall take effect in 60 days.